DIRECTOR-GENERAL OF INLAND REVENUE *a*

v.

TEO TUAN KWEE

HIGH COURT MALAYA, JOHOR BAHRU *b*
ABDUL MALIK ISHAK J
[CIVIL APPEAL NO: 12-18-1997]
25 SEPTEMBER 1997

REVENUE LAW: *Income Tax - Capital allowance - Purchase of lorries - Whether considered capital expenditure - Lorries not registered in tax payer's name - Whether taxpayer entitled to capital allowance - Schedule 3 of Income Tax Act 1967* *c*

STATUTORY INTERPRETATION: *Construction of statutes - Income Tax Act - Paragraphs 15 & 46 - Interpretation of "owner" - Whether to interpret to mean legal, beneficial or registered owner - Whether court can adopt fair and reasonable construction* *d*

This was an appeal from the Director-General of Inland Revenue ('the DG') against a decision of the Special Commissioners of Income Tax ('the Commissioners'), by way of case stated. *e*

The taxpayer had appealed to the Commissioners in regard to a notice of assessment levied by the DG. The taxpayer was assessed income tax on his income from his lorry business. He had incurred capital expenditure when he purchased the lorries which he used for his business. The Commissioners were of the view that the taxpayer was entitled to capital allowance under sch. 3 of the Income Tax Act 1967 ('the Act'), and that the lorries would be subjected to the prescribed rate of 20%. The DG argued that the entitlement would accrue only if the subject lorries were legally owned by the taxpayer. The taxpayer was not the registered owner of the lorries and although the lorries were purchased by him, the haulage permits were not registered in his name. Thus, the court had to decide whether the taxpayer was entitled to capital allowance. *f* *g*

Held:

[1] In construing the Act, one must not lose sight of the need to see the clear words, employed therein, in order to tax the taxpayer. A strained construction in favour of the DG should not be adopted as the word "owner" is capable of being interpreted in many ways. In construing the paragraphs in the Act, the court must adopt a fair and reasonable construction to the language employed therein, without leaning to the side of the DG or that of the taxpayer. *h* *i*

[2] Section 2 of the Act defines tax to mean "the tax imposed by this Act". It is clear that the Act is meant to levy tax on the taxpayer. Thus, clear and unambiguous words must be employed to tax the taxpayer, so that the latter will be obliged to pay. The meaning which is given to the word "owner", in paras. 15 and 46 of sch. 3, must not be such as to make those paragraphs capable of being an instrument of oppression. It must be construed in consonance with the preamble to the Act and that is to impose income tax on the taxpayer provided the words employed are crystal clear.

[3] The court should adopt the approach enunciated in *Carew & Co v. Union of India,* to the effect that when two interpretations are feasible, the court will prefer that which advances the remedy and suppresses the mischief, as the legislature envisaged. The paragraphs to the Act are capable of three interpretations. The word "owner" may mean legal ownership or beneficial ownership or registered ownership. The word "owner" should not be confined to legal ownership, but should be extended to cover the situation of the instant taxpayer. This was to suppress the mischief and it should be read to mean beneficial ownership.

[4] Ownership may be described as the entirety of the powers of use and disposal allowed by law. The owner of a thing is not necessarily the person who at a given time has the whole power of use and disposal. The person having the residue of all such power will be the owner even if the immediate power of control and use is elsewhere.

[4a] On the facts of the case, the taxpayer was the beneficial owner of the subject lorries and he should therefore be entitled to the capital allowances under sch. 3 of the Act.

Obiter dicta:

[1] Appeals from the decisions of the Commissioners in tax cases are made by way of case stated. Any appeal is on a question of law and pure findings of fact may not be challenged on appeal.

[2] The court has clear and undoubted jurisdiction to reverse a decision on questions of law.

[Appeal dismissed.]

Cases referred to:

Arthur Hill v. East and West India Dock Co [1884] 9 AC 448 ***(refd)***

Barton (Revenue Officer For The Stepney Assessment Area) v. R Twining & Co Ltd (Occupiers) [1931] 1 KB 475 ***(refd)***

Bowditch v. Wakefield Local Board [1871] LR 6 QB 567 ***(refd)***

Brett v. Brett [1826] 3 Add 210 ***(refd)***

Busching Schmitz Private Ltd v. PT Menghani [1977] AIR 1569 ***(refd)***

Carew & Co v. Union of India [1975] AIR 2260 ***(foll)***

Chesterman & Ors v. Federal Commissioners of Taxation [1926] AC 128 ***(refd)***

Director-General of Inland Revenue v. Rakyat Berjaya Sdn Bhd [1984] 1 MLJ 248 ***(refd)***

Gordon Hill Trust Ltd v. Segall [1941] 2 All ER 379 ***(refd)***

Intercontinental Properties (Pte) Ltd & Ors v. Chief Assessor/The Comptroller of Property Tax [1982] 1 MLJ 119 ***(refd)***

Lee Yew Hin v. Kow Lup Piow [1974] 1 MLJ 114 ***(refd)***

Ormond Investment Co Ltd v. Betts (HM Inspector of Taxes) 13 TC 400 [1927] 2 KB 326 ***(refd)***

Partington v. Attorney-General LR 4 AC 100 ***(refd)***

Poppatlal Shah v. State of Madras [1953] AIR 274 ***(refd)***

Seaford Court Estates Ltd v. Asher [1949] 2 All ER 155 ***(refd)***

The Baumwoll Manufactur Von Carl Scheibler v. Christopher Furness [1893] AC 8 ***(refd)***

The Cape Brandy Syndicate v. The Commissioners of Inland Revenue (Reports of Tax Cases, vol XII, p 358 ***(refd)***

Truman, Hanbury, Buxton & Co Ltd v. Kerslake [1894] 2 QB 774 ***(refd)***

Watts v. Battersea Corp [1929] All ER Rep 201 ***(refd)***

Legislation referred to:

Control of Rent Ordinance No 25 of 1947, s. 14(1)

Estate Duty Assessment Act 1914-1916 [Aust], s. 8(5)

Finance (No 2) Act 1915, ss. 39

Income Tax Act 1967, s. 2(1) schs. 3 paras 15, 46, 5 para 34

Income Tax (Qualifying Plant Annual Allowances) Rules 1980, r. 1(2)

Property Tax Act, ss. 2, 9(3)

Public Health Act 1848 [UK], s. 2

Other sources referred to:

Pollock on Jurisprudence, 6th edn, pp 178-180

Strouds Judicial Dictionary, p 1828

For the appellant - Zaleha Adam, Legal Officer & Federal Counsel for Director General of Inland Revenue

For the respondent - Mah Weng Kwai; M/s Mah Weng Kwai & Co

JUDGMENT

Abdul Malik Ishak J:

This was an appeal that came up to me by way of a case stated by the Special Commissioners of Income Tax ('special commissioners') under para. 34, Sch. 5 of the Income Tax Act 1967 (Act 53). The then Federal Court in the case of *Director-General of Inland Revenue v. Rakyat Berjaya Sdn Bhd* [1984] 1 MLJ 248 FC had this to say in regard to a case stated by the special commissioners:

> Appeals from the decisions of the Special Commissioners in tax cases are made by way of case stated under the Income Tax Act 1967 Sch. 5, para. 34. The paragraph states clearly that any appeal is on a question of law. Hence, pure findings of fact may not be challenged on an appeal. However, the court has clear and undoubted jurisdiction to reverse a decision on questions of law.

The special commissioners made the following findings of facts:

(a) the respondent ("taxpayer") was 39 years old and was at all material times the proprietor of a lorry transport business known as Syarikat Perniagaan dan Perwakilan Pengangkutan Teo which carried on business at No: 20, Jalan Ungku Ali, Kampung Melaka, Batu Pahat, Johor;

(b) the taxpayer was assessed in income tax by the Director-General of Inland Revenue ("revenue") on his income from his lorry transport business and dividends from shares in Chin Giap Plantations Co. Sdn Bhd as follows:

Year of Assessment	Date of Notice of Assessment	Tax Payable
1982	30.6.1984	$31,155.85
1983	30.6.1984	$39,724.15

(c) the taxpayer appealed against the abovementioned assessments on the grounds that no deductions have been allowed by the revenue in respect of capital allowances which the taxpayer claimed were due to him under Schedule 3 to the Income Tax Act, 1967 (Act 53) on capital expenditure incurred by him on four motor lorries which were used for the purposes of his business;

(d) the revenue conceded that the taxpayer financed the purchase of the four (4) motor lorries and trailers (in their generality hereinafter referred to as 'the subject lorries') as described hereunder:

(1) motor lorry registration no: JAJ 1865 and trailer no: JJ 802 (hereinafter referred to as the 'first lorry'); the registered owner of this first lorry was at all material times Haji Mohd. Jidi bin Ma'arof who was also the registered haulage permit holder;

(2) motor lorry registration no: JAJ 3394 and trailer no: JJ 820 (hereinafter referred to as the 'second lorry'); the registered owner of this second lorry was at all material times Syed Hadad alias Syed Abdullah bin Alwi Alattas who was also the registered haulage permit holder;

(3) motor lorry registration no: JAJ 3283 and trailer no: JJ 821 (hereinafter referred to as the 'third lorry'); the registered owner of this third lorry was at all material times Mohd. Lazim bin Sudin who was also the registered haulage permit holder;

(4) motor lorry registration no: BAR 1421 and trailer no: JJ 922 (hereinafter referred to as the 'fourth lorry'); the registered owner of this fourth lorry at all material times was Mohamad bin Hj. Suity alias Sayuti who was also the registered haulage permit holder;

(e) the first, second and third lorries were acquired on hire-purchases through finance companies in 1980 whilst the fourth lorry was acquired in 1982 by direct purchase from Hasanaco Sdn Berhad;

(f) revenue rejected the tax payer's claim for initial and annual allowances on the subject lorries on the grounds that the taxpayer was not the legal owner;

(g) the taxpayer proved that he paid the hire purchase instalments and purchase price of the subject lorries and had thus incurred capital expenditure on the provision of the subject lorries which were used for the purposes of his lorry transport business;

(h) the registered owners of the subject lorries merely lent their names in consideration of earning monthly rentals for the haulage permits which were in their respective names; they had no interest in or connection with the day to day running of the transport business which was solely run by the taxpayer;

(i) under the Income Tax (Qualifying Plant Annual Allowances) (Amendment) Rules 1980 gazetted as PU(A) 346 dated 4.12.80 and effective from assessment year 1981 *et seq*, 'motor vehicles licensed for commercial transportation of goods and passengers – lorries, trucks ... etc' and listed under 'land transport equipment' under the Schedule to the Rules are classified as 'qualifying plant' under the said Rules; the prescribed rate of annual allowance is 20 percent.

A small but an important point of law arose for determination. It was this: Whether the taxpayer was entitled to capital allowances under sch. 3 of the Income Tax Act 1967 (Act 53) in respect of the subject lorries acquired and used for the purposes of the business of the taxpayer? The special commissioners heard the appeal of the taxpayer in regard to the notice of assessment levied by the revenue as reflected in (b) above and gave its decision in a deciding order dated 11 June 1988 in favour of the taxpayer. The revenue by a notice dated 29 June 1988 requested a case to be stated for the opinion of this court pursuant to para. 34, sch. 5 of the Income Tax Act 1967 (Act 53).

As the taxpayer purchased the said lorries which necessarily made him to incur capital expenditure, the special commissioners were of the view that the taxpayer was entitled to the capital allowances under sch. 3 of the Income Tax Act 1967 (Act 53). The special commissioners must have arrived at that conclusion as the subject lorries were used for the purposes of the business of the taxpayer. At this juncture, it is opportune to refer to the relevant paragraphs to sch. 3 of the Income Tax Act 1967 (Act 53). These paragraphs would be as follows:

> 1. Subject to this Schedule, qualifying expenditure for the purposes of this Schedule is qualifying plant expenditure or qualifying building expenditure within the meaning of paragraphs 2 to 6.
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> 2. (1) Subject to sub-paragraph (2) and paragraph 67, qualifying plant expenditure is capital expenditure incurred on the provision of machinery or plant used for the purposes of a business, including -
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> (a) ...
>
> (b) ...
>
> (c) ...
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> (2) In the case of a motor vehicle (other than a motor vehicle licensed or permitted, by the appropriate authority, for commercial transportation of goods or passengers, such as lorry, truck, bus, mini bus, van, station wagon, taxi cab or hire car) the qualifying plant expenditure incurred on or after the first day of the basis period for the year of assessment 1991 shall be limited to a maximum of fifty thousand ringgit.
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> 10. Subject to this Schedule, where in the basis period for a year of assessment a person has for the purpose of a business of his incurred qualifying plant expenditure, there shall be made to him in relation to the source consisting of that business for that year an allowance equal to one-fifth of the expenditure or such other fraction as may be prescribed.

13. Notwithstanding paragraphs 10 to 12 -

(a) no allowance shall be made to a person under paragraph 10 for a year of assessment in relation to an asset and a business of his if at the end of the basis period for that year he was not the **owner** of the asset or it was not in use for the purposes of the business or, where the asset was disposed of by him in that period, he was not the **owner** of the asset or it was not in use, prior to its disposal, for the purposes of the business at some time in that period.

15. Subject to this Schedule, where a person has for the purposes of a business of his incurred qualifying plant expenditure in relation to an asset and at the end of the basis period for a year of assessment he was the **owner** of the asset and it was in use for the purposes of the business, there shall be made to him in relation to the source consisting of that business for that year an allowance equal to such proportion of that expenditure as may be prescribed.

46. Where a person incurs capital expenditure under a hire purchase agreement on the provision of any machinery or plant for the purposes of a business of his, he shall for the purposes of this Schedule be taken to be the **owner** of that machinery or plant; and the qualifying expenditure incurred by him on that machinery or plant in the basis period for a year of assessment shall be taken to be the capital portion of any instalment payment (or, where there is more than one such payment, of the aggregate of those payments) made by him under the agreement in that period.

The expression "qualifying plant expenditure" is further exemplified in r. 1(2) of the Income Tax (Qualifying Plant Annual Allowances) Rules 1980 vide P.U.(A)80 which states that:

> These Rules shall have effect in respect of qualifying plant expenditure incurred from 1 January 1978 to 31 December 1982, which in these Rules is referred to as the relevant period, on the provision of machinery or plant used directly in the manufacture of any product or the subjection of goods or materials to any process.

The Income Tax (Qualifying Plant Annual Allowances) (Amendment) Rules 1980 amends and substitutes the Schedule to the Income Tax (Qualifying Plant Annual Allowances) Rules 1968 and under category "B" with the caption "Rates For Particular Types of Plant Not Confined To Specific Industries", the prescribed rate of 20 percent was accorded to:

> Motor vehicles licensed for commercial transportation of goods and passengers – **lorries,** trucks, bus, mini bus, vans, taxicabs and hire-cars.

This meant that the subject lorries would be subject to the 20 percent rate. But such entitlement would only accrue if the subject lorries were legally owned by the taxpayer, so submitted Miss Zaleha bt Adam, the learned legal officer and federal counsel for the revenue. This brings into focus the meaning to be attached to the word "owner" appearing in, particularly, paras. 15 and 46 of sch. 3 to the Income Tax Act 1967 (Act 53).

In the field of construction of the Income Tax Act 1967 (Act 53) one must not lose sight of the need to see the clear words employed therein in order to tax the taxpayer. This seems to be the view echoed by Rowlatt J in *The Cape Brandy Syndicate v. The Commissioners of Inland Revenue* vol. X11, *Reports of Tax Cases* at p. 358 especially at p. 366 where his Lordship said:

> Now of course it is said and urged by Sir William Finlay that in a taxing Act clear words are necessary to tax the subject. But it is often endeavoured to give to that maxim a wide and fanciful construction. It does not mean that words are to be unduly restricted against the Crown or that there is to be any discrimination against the Crown in such Acts. It means this, I think; it means that in taxation you have to look simply at what is clearly said. There is no room for any intendment; there is no equity about a tax:
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> > there is no presumption as to a tax; you read nothing in; you imply nothing, but you look fairly at what is said and at what is said clearly and that is the tax.

The facts in *The Cape Brandy Syndicate* are quite interesting. Rowlatt J summarised the facts in this way:

> In this case the subject appeals against an assessment to Excess Profits Duty. It appears that three gentlemen, who were members of three firms engaged in the wine trade, entered into a speculation independently of their firms, forming together a little syndicate consisting of their three selves for that purpose, and their speculation was this. They bought a large quantity of Cape brandy in South Africa from the Government there. They did not buy it all at once because they did not know originally how much there was for sale, but they bought ultimately all that there was. I do not think that the circumstances that they bought it piecemeal in that way makes very much difference in the case.
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> Having done so, they succeeded in selling some of it at a profit, as it was, for export to the East, and the remainder they brought home to this country, I think 'as ships offered' is the wording of the statement in the Case, and when they had got it here, they caused it to be blended with a certain amount of French brandy. For that purpose they employed their three respective firms and paid them. They then re-casked it, of course, and re-casked it in more caskets or receptacles than it had originally been in, and they then proceeded to dispose of it piecemeal through their three firms, and they disposed of it, I think, in about 100 transactions which lasted fourteen months.

The appellants in *The Cape Brandy Syndicate* contended that they carried out an isolated transaction of a speculative nature, which was not a trade or business within the meaning of s. 39 of the Finance (No: 2) Act 1915; and, alternatively, that if they carried on a trade or business, the profits arising from a business commencing after 4 August 1914, were not chargeable to Excess Profits Duty. The special commissioners there held that the profits in question arose from a trade or business carried on by the appellants, and excess profits duty was chargeable in respect thereof. Rowlatt J dismissed the appellants' appeal with costs. The Court of Appeal (Lord Sterndale MR and Scrutton and Younger L JJ) affirmed the decision of Rowlatt J and dismissed the appeal with costs. The Court of Appeal held that the question whether the appellants carried on a trade was one of fact, and that there was evidence on which the special commissioners could arrive at their conclusion. The Court of Appeal also held that on a true construction of the Finance (No: 2) Act 1915, and subsequent Acts, a trade or business commenced since the beginning of the war was liable to assessment to excess profits duty.

Chesterman and Others v. Federal Commissioners Of Taxation [1926] AC 128 was an appeal to the Privy Council from the High Court of Australia. There the Estate Duty Assessment Act 1914-1916, of the Commonwealth of Australia, by s. 8, sub-s. 5, exempted from the payment of estate duty so much of an estate as was bequeathed "for religious, scientific, charitable or public educational purposes." A testator bequeathed the residue of his estate upon trusts under which prizes were to be awarded to various classes of persons, military, naval and civil, of both sexes, the merit of the candidate to be ascertained by various physical, moral and literary tests. Reversing the decision of the High Court, the Privy Council ruled that the word "charitable" in s. 8, sub-s. 5 of the Estate Duty Assessment Act 1914-1916, of the Commonwealth of Australia was used in its technical legal sense, and not with the narrower meaning of "eleemosynary," which it has in popular language; and that, accordingly, the residue of the estate was exempted from estate duty. The Privy Council also held that it was not necessary to decide whether the bequest was also for "public educational purposes." Lord Wrenbury delivering the judgment of the Privy Council said at p. 131 of the report:

> In approaching this question the starting point is found in *Pemsel's* case [1891] AC 531 in the House of Lords, and in Lord Macnaghten's words at p. 580: 'In construing Acts of Parliament it is a general rule ... that words be taken in their legal sense unless a contrary intention appears'.

Again on the subject of statutory construction, in construing the Rating and Valuation (Apportionment) Act 1928, Scrutton LJ said in the case of *Barton (Revenue Officer For The Stepney Assessment Area) v. R. Twining And Company, Limited (Occupiers)* [1931] 1 KB 475 especially at p. 479:

> We, however, have not to frame an equitable scheme of relief from taxation; our duty is to endeavour to interpret the words in which Parliament has expressed its intention; if the result does not satisfy Parliament, it can express its intention more accurately by amending legislation.

For guidance reference should also be made to the case of *Ormond Investment Company, Limited v. Betts (H.M. Inspector of Taxes)* 13 TC 400 (also reported in [1927] 2 KB 326 and before the House of Lords in [1928] AC 143) in construing the Income Tax Act 1967 (Act 53). The brief facts in that case were these. The Ormond Investment Company, Limited, was a company formed in June 1922, incorporated under the Companies Acts. It carried on the business of an investment company in Bradford. In August of the same year, it acquired a large holding in shares in a company incorporated to carry on business in America; and in the course of the same financial year – that was on 7 December 1922, the appellant company received a dividend of 601,717 pound on its holding of these shares. It received no further dividend on these shares or any other income from possessions out of the United Kingdom up to the close of the financial year on 5 April 1923, and it appeared that the sum of 601,717 pound was a dividend arising from a distribution of two years' profits. The question that arose for decision was this: Was Ormond Investment Company, Limited, liable to assessment to Income Tax in respect of the sum which it has received from its foreign investment for these two years? Lord Hanworth MR, delivering a separate judgment for the Court of Appeal, made pertinent remarks which should be referred to. In his illuminating judgment his Lordship said at p. 410 of the report:

> Mr. Bremner has called our attention to the well-known words which have been used in these Income Tax cases by many noted judges in the past. It is well always to bear them in mind, and I refer to the passage to which he called our attention, in order to show that in the judgment I am about to deliver I have not overlooked the words, which are the words of Lord Cairns. 'If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be, (*Partington v. Attorney-General* [1869] 4 E. & I. App. 100 at p. 122). Equally we must bear in mind the words which have been quoted, following those words of Lord Cairns, the words of Lord Justice Cotton (*Gilbertson v. Fergusson* 1 T.C. 501 at p. 519): 'I quite agree we ought not to put a strained construction upon that section in order to make liable to taxation that which would not otherwise be liable, but I think it is now settled that in construing these Revenue Acts, as well as other Acts, we ought to give a fair and reasonable construction, and not to lean in favour of one side or the other, on the ground that it is a tax imposed upon the subject, and thereof ought not to be enforced unless it comes clearly within the words.

Lord Hanworth MR in the same case continued at p. 414 in these words:

> In a number of cases in the Income Tax Act it is not easy to give a precise or perfect definition of what the words may mean or do mean, but many of these difficulties are overcome in the actual cases which have to be solved by determination of the facts. That determination of the facts is left to those who are entrusted with that duty, and who are not unacquainted with business, whether of trade or of the receipt of profits from foreign possessions.

It must be noted that the Court of Appeal in the *Ormond Investment Company, Limited v. Betts (H.M. Inspector of Taxes) (supra)* handed down a unanimous decision in favour of the Crown with costs, thereby reversing the decision of the court below. The company, being dissatisfied, appealed to the House of Lords (Lord Buckmaster, Viscount Sumner, and Lords Atkinson, Wrenbury and Warrington of Clyffe). On 24 February 1928, the House of Lords delivered its judgment against the Crown with costs (Lord Buckmaster dissenting) thereby reversing the decision of the Court of Appeal. Lord Atkinson delivering a separate judgment for the House of Lords observed at p. 434 of the report:

> My Lords, when it is remembered that it is well established that one is bound in construing Revenue Acts to give a fair and reasonable construction to their language without leaning to one side or the other, that no tax can be imposed on a subject by an Act of Parliament without words in it clearly showing an intention to lay down the burden upon him, that the words of the statute must be adhered to and that so-called equitable constructions of them are not permissible (*Partington v. Attorney-General*, 4 E. & I. App. 100 at p. 122; *Gilbertson v. Fergusson* 1 TC 501, 7 QBD 562; In *re Micklethwait* 11 Ex. 452; *Tennant v. Smith* 3 TC 158, [1892] AC 150, I am for the reasons I have mentioned unable to come to the conclusion that the different provisons of sch. D of the Act of 1918, to which I have referred, clearly impose the burden of Income Tax on the appellants in respect of the dividends they have received from their foreign securities.

Applying these principles of law enunciated by these eminent judges, I shall now proceed to determine whether the word **"owner"** in paras. 15 and 46 of sch. 3 to the Income Tax Act 1967 (Act 53) must necessarily refer to **"legal ownership"** as opposed to **"beneficial ownership."** To recapitulate, it must be remembered that the subject lorries were paid for by the taxpayer. No doubt the first, second and third lorries were acquired on hire purchases through finance companies in 1980 whilst the fourth lorry was acquired in 1982 by direct purchase, yet the taxpayer had proved that he paid for the hire purchase instalments and the purchase price of the subject lorries. Much fuss was made by Miss Zaleha bt Adam that the subject lorries were registered in the names of other personalities and, consequently, these personalities became the legal owners of the subject lorries. She argued that the person who incurred the qualifying plant expenditure in relation to an asset must be the legal owner

of the asset in order to qualify for the capital allowance. But since the taxpayer incurred capital expenditure under the hire purchase agreements for the first, second and third lorries must the taxpayer then **"be taken to be the owner of"** those lorries within the meaning of para. 46 of sch. 3 to the Income Tax Act 1967 (Act 53)? It is certainly unfortunate that there is no definition to the word **"owner"** under the Income Tax Act 1967 (Act 53). It is interesting to note that *Strouds Judicial Dictionary* at p. 1828 contains a short passage in regard to the meaning of the word **"owner"**. It states as follows:

> The'owner' or 'proprietor' of a property is the person in whom (with his or her assent) it is for the time being beneficially vested, and who has the occupation, or control, or usufruct *[sic]* of it, eg, a lessee is, during the term, the owner of the property demised (see judgment of Bramwell LJ, *Eglinton v. Norman,* 46 LJ QB. 559; see also *Chauntler v. Robinson,* 4 Ex. 163; *Russell v. Shenton,* 3 QB 449; *Lister v. Lobley,* 6 LJ KB 200). So, in *Cook v. Humber* (31 LJCP 75), Erle CJ, spoke of the 'occupation' necessary to the franchise, under Representation of the People Act 1832 (c. 45), s. 27, as equivalent to the 'actual exercise of the rights of the owner of a house in possession.' But in *Re Crawley, Acton v. Crawley,* 28 Ch.D 431), Pearson J, said, 'the owner – that is, the person entitled to the rack-rent.

My research shows that the word **"owner"** has different meanings in different contexts. I will now proceed to demonstrate it by citing a few authorities.

In the context of s. 14 (1)(l) of the Control of Rent Ordinance No: 25 of 1947, Sir Charles Murray-Aynsley CJ was of the view that the word **"owner"** had no precise technical meaning nor was it a term of art.

In construing the Employee's Social Security Act (1969), Tan Chiaw Thong J had occasion to consider whether the defendant there was owned by the State Government of Sarawak. This was what his Lordship said:

> In this connection, the Oxford English Dictionary defines 'owner', *inter alia,* as one who owns or holds something as their own; a proprietor; one who has the rightful claim or title to a thing (though he may not be in possession).

In *Truman, Hanbury, Buxton & Co., Limited v. Kerslake* [1894] 2 QB 774 the court, where a lessee of premises not let to him at rackrent had sublet, held it was the sub-lessee and not the lessee who was the **"owner"** of the premises within the meaning of the Public Health (London) Act 1891. This Act enacts that **"owner"** shall mean "the person for the time being receiving rackrent of the premises ... or who would so receive the same if such premises were let at a rackrent".

In *Bowditch v. Wakefield Local Board* [1871] LR 6 QB 567, it was argued for one of the three trustees of the school, the appellant, "that he was not receiving, and never had received, any rent whatever from the property, either on his own account or as agent or trustee, nor could receive any rent in respect of the same property, having no power to let the same; that the property could not in fact, be let at a rent." The sole question for the decision of the court was whether or not the appellant was an **"owner"** within the meaning of s. 2 of the Public Health Act 1848 which enacts, that **"owner"** shall mean the person for the time being receiving the rackrent of the lands or premises, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rackrent. Blackburn J delivering his judgment said this:

> The definition of 'owner', however, in s. 2 does not say 'owner' shall include, but shall mean. Now, though these premises are and must be held as schools, and cannot be let for any purpose, yet, if they were let, the rent would come to the appellant. I think, therefore, he is 'owner' within the meaning of the definition.

In *Watts v. Battersea Corporation* [1929] All ER Rep. 201 where a solicitor received rents as agent for the owner of three houses from a builder who was employed by the owner to collect the rents, Scrutton and Sankey LJJ (Greer LJ dissenting) held in the Court of Appeal, that the solicitor was the **"owner"** of the three houses within the definition in the Public Health (London) Act 1891 and the Public Health Act 1875. This case has been referred to in the text books as authority for the proposition that more than one person, at any one time, may be an **"owner"** of a premises within the definition in the Public Health Acts. (See *Lumley's Public Health Acts,* p. 2882; D.K. Walters at p. 17). Scrutton LJ in his judgment at p. 206 gave a reason for the enactment of the definition in the form it was in:

> Then came the question, who is the owner? Parliament seemed to have contemplated that it might be difficult for the local authority to find the owner. He may not be in United Kingdom at all, he may be of such kind of owner that it is difficult to get at, and so the statute defined "owner" ... .

Sankey LJ wrote a separate judgment in *Watts* and this was what he said at p. 209 of the report:

> Turning to the definition itself it will be observed that it does not say ' 'owner' means the person for the time being receiving the rackrents from the tenant'. The words 'from the tenant' which are found inserted in other statutes do not appear in this statute. The words are at large and the definition is left at large.

In *Intercontinental Properties (Pte) Ltd & Ors v. Chief Assessor/The Comptroller of Property Tax* [1982] 1 MLJ 119 at p. 121, Chua J had occasion to consider ss. 2, and 9(3) of the Property Tax Act (Cap 144, 1970 Edn) in regard to the word **"owner"**. This was what his Lordship said:

> The term 'owner' under the Act does not mean legal owner ... . The Act is concerned with the beneficial ownership and not with the legal ownership. The term 'owner' in s. 9(3) must have the meaning given in s. 2.

In the context of an agreement for the purchase of 105 acres of land, Gill FJ speaking for the then Federal Court in the case of *Lee Yew Hin v. Kow Lup Piow* [1974] 1 MLJ 114 FC, explained the meaning of the word **"owner"** in this way:

> As regards the word 'owner' in the preamble to the agreement, the learned judge found that this was the result of an oversight on the part of Seah. Moreover, the same word appeared in several subsequent agreements which the defendant had entered into with other people. Furthermore, any wrong impression which the word 'owner' might have raised in the mind of the plaintiff should have been dispelled when cl. 3 of the agreement was explained to him. In any event, since the defendant had a valid contract with Loy to purchase the land, he was in fact, on the authority of *Gordon Hill Trust Ltd v. Segall* [1941] 2 All ER 379, the owner in equity and therefore entitled to describe himself as the owner. In the result, the learned judge was satisfied that there was no misrepresentation on the part of the defendant or any one acting on his behalf to induce the plaintiff to enter into the agreement.

The appellant in *Gordon Hill Trust, Ltd v. Segall* [1941] 2 All ER 379 had a valid contract to purchase the property, and the Court of Appeal (Mackinnon and Luxmoore LJJ, and Stable J) held that that being the case the appellant was in fact the owner of the property in equity and entitled to describe himself as the owner.

The House of Lords in determining the liability of the owner of the chartered ship on the bills of lading signed by the master had this to say in *The Baumwoll Manufactur Von Carl Scheibler v. Christopher Furness* [1893] AC 8 especially at p. 17 thereof:

> The person who has the absolute right to the ship, who is the registered owner, the owner (to borrow an expression from real property law) in fee simple, may be properly spoken of, no doubt, as the owner; but at the same time he may have so dealt with the vessel as to have given all the rights of ownership for a limited time to some other person, who, during that time, may equally properly be spoken of as the owner. When there is such a person, and that person appoints the master, officers, and crew of the ship, pays them, employs them and gives them the orders, and deals with the vessel in the adventure,

> during that time all those rights which are spoken of as resting upon the owner of the vessel, rest upon that person who is, for those purposes during that time, in point of law to be regarded as the owner. When that distinction is once grasped it appears to me that all the difficulties that have been raised in this case vanish. There is nothing in your Lordships' judgment, as I apprehend, which would detract in the least from the law as it has been laid down with regard to the power of a master to bind an owner, or with regard to the liabilities which rest upon an owner. The whole difficulty has arisen from failing to see that there may be a person, who, although not the absolute owner of the vessel, is, during a particular adventure, the owner for all those purposes.

Mr. Mah Weng Kwai, the learned counsel for the taxpayer, argued that this court should not be concerned that the interpretation of the word **"owner"** in favour of the taxpayer would open the floodgate as there was a built-in remedy for it in the form of an amendment. Indeed in construing a statute the court must give life to it. The court must endeavour to do its best to interpret the statute and not to wring its hand and blame the poor draftsman. In the words of Lord Denning LJ in *Seaford Court Estates, Ltd v. Asher* [1949] 2 All ER 155, 164:

> Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, where a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force of life' to the intention of the legislature ... .

Now, the subject lorries were purchased and used by the taxpayer for purposes of his business. The registered owners of the subject lorries were mere "dummies" used by the taxpayer to advance his business enterprise. This was a typical "Ali-Baba" venture. As to why the taxpayer did not register the subject lorries in his name, no reasons were advanced by either the taxpayer nor the revenue. At any rate, this was not the concern of the court. In my judgment, it was the taxpayer who incurred capital expenditure under the hire purchase agreements for the first, second and third lorries and under para. 46

of sch. 3 to the Income Tax Act 1967 (Act 53), the taxpayer shall be taken to be the **"beneficial owner"** of these lorries. The same would also be true in regard to the fourth lorry as it was a direct purchase by the taxpayer. In my judgment, the word **"owner"** should not be confined to legal ownership. It should be extended to cover the situation of the present taxpayer. It should therefore include beneficial ownership. If the draftsman meant by the use of the word **"owner"** in paras. 15 and 46 of sch. 3 to the Income Tax Act 1967 (Act 53) to mean **"registered owner"** or **"legal owner"** then it should be clearly specified. The English language is an intricate language. Precision in the use of the English language when drafting a statute cannot be over emphasised. It is a necessary evil. Words used by the draftsmen do not always bear a plain meaning. The Income Tax Act 1967 (Act 53) is no exception. Judges too quite often differ on the issue whether certain words are plain and even when there is an agreement that the words are plain, difference of opinion may result on the question as to what the plain meaning is. All the authorities referred to in the early part of this judgment in regard to the meanings to be attached to the word **"owner"** in the context of different statutes singularly show that the courts were not concerned about the consequences. The courts were more concerned about giving "life" to the statutes. Equitable considerations are irrelevant in interpreting tax laws. But, tax laws, like all other laws, must and have to be interpreted reasonably and in consonance with justice and fairplay. As Lord Cairns said in *Partington v. Attorney-General* LR 4 A.C 100, 122:

> On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free.

I repeat that clear words are necessary and should be employed when the taxing Act are designed to tax the taxpayer. Can't this court "read nothing in and imply nothing" in construing paras. 15 and 46 of sch. 3 to the Income Tax Act 1967 (Act 53)? Must this court interpret the word **"owner"** in the context of the present issue to mean **"legal owner"** and not **"beneficial owner"** or **"registered owner"**? The additions of the words **"legal"** or **"beneficial"** or **"registered"** to the word "owner" would mean that there are additions to be read into the taxing Act. This was the very thing that Rowlatt J in *The Cape Brandy Syndicate v. The Commissioners of Inland Revenue (supra)* was not amenable to. Now, if the words in paras 15 and 46 of sch. 3 to the Income Tax Act 1967 (Act 53) are to be taken in their legal sense as suggested by Lord Wrenbury in *Chesterman and Others v. Federal Commissioners of Taxation (supra),* the word **"owner"** may relate to **"legal ownership"** or **"beneficial ownership"** or **"registered ownership"**. Am I supposed to give and put "a strained construction upon" those paragraphs in the taxing Act in order to make the taxpayer liable to pay where otherwise

he would not be liable? I am of the considered view that "a strained construction" in favour of the revenue should not be adopted as the word **"owner"** is capable of being interpreted in so many ways. It is not an easy task to give "a precise or perfect definition" to the word **"owner"** in the context of those paragraphs in the taxing Act. The facts of the present case certainly put a different flavour to the meaning of the word **"owner"** and by resorting to those facts, which have been done, the difficulties encountered have been reduced and curtailed. It goes without saying that in construing those paragraphs in the taxing Act, I must adopt a fair and reasonable construction to the language employed therein without leaning to the side of the revenue or that of the taxpayer. I must be seen to be fair. But of pertinence to note would be this. That clear words must be employed in the taxing Act before a taxpayer is ordered to pay his tax. As Lord Cairns remarked in *Arthur Hill v. East and West India Dock Co.* [1884] 9 AC 448 HL:

> I say that we must look to what the purpose is.

Sir John Nicholl remarked in *Brett v. Brett* [1826] 3 Add 210; 162 FR 456 that "the key to the opening of every law is the reason and the spirit of the law."

In India, Mukherjea J observed in *Poppatlal Shah v. State of Madras* [1953] AIR 274 SC that: "Each word, phrase or sentence is to be construed in the light of general purpose of the Act itself."

Still in India, Shah J remarked in *Busching Schmitz Private Ltd v. PT Menghani* [1977] AIR 1569 SC, that the court should adopt a project oriented approach, keeping in mind the principle that legislative futility is to be ruled out so long as interpretative possibility permits.

I gratefully adopt the approach enunciated in the case of *Carew & Co v. Union of India* [1975] AIR 2260 SC to the effect that when two interpretations are feasible, the court will prefer that which advances the remedy and suppresses the mischief as the legislature envisaged. The paragraphs to the taxing Act are capable of three interpretations. As I said the word **"owner"** may mean **"legal ownership"** or **"beneficial ownership"** or **"registered ownership"** and to suppress the mischief it should be read to mean "beneficial ownership" as it falls squarely within the factual matrix of the present case. Now, the preamble to the Income Tax Act 1967 (Act 53) enacts as follows:

> An Act for the imposition of income tax.

Section 2(1) of the Income Tax Act 1967 (Act 53) defines tax to mean "the tax imposed by this Act." It is clear that the taxing Act is meant to levy tax on the taxpayer. That being the case, clear and unambiguous words must be

employed to tax the taxpayer so that the latter will be obliged to pay. The purposes of the taxing Act are wider than those which have been called revenue enactments and they are intended to ensure the systematic collection of revenue on which the prosperity of this country is dependent upon. Tax payers must pay taxes for that would be the revenue of the country. But before tax payers are called upon by the revenue to pay their taxes, the provisions of the taxing Act must clearly provide for it. I am unable to subscribe to the notion that the taxpayer must pay tax even though it is not provided for in the taxing Act. The meaning which I give to the word **"owner"** in paras. 15 and 46 of sch. 3 to the Income Tax Act 1967 (Act 53) must not be such as to make those paragraphs capable of being made an instrument of oppression. It must be construed in consonance with the preamble to the taxing Act and that would be to impose income tax on the taxpayer provided the words employed in those paragraphs are crystal clear.

Pollock on Jurisprudence, 6th Edn (1929) at pp. 178-180 contained passages which are germane to the present case. These passages are adopted to give "life" to the paragraphs in the taxing Act and they were worded thus:

> Ownership may be described as the entirety of the powers of use and disposal allowed by law ... . The owner of a thing is not necessarily the person who at a given time has the whole power of use and disposal; very often there is no such person. We must look for the person having the residue of all such power when we have accounted for every detached and limited portion of it; and he will be the owner even if the immediate power of control and use is elsewhere.

On the facts, the taxpayer was the beneficial owner of the subject lorries and he should therefore be entitled to the capital allowances under sch. 3 of the Income Tax Act 1967 (Act 53). This was my judgment and I so hold accordingly.

For the reasons adumbrated above, the appeal by the revenue was dismissed with costs. This meant that the decision of the special commissioners was affirmed forthwith.

Reported by Anne Soh